

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

AUGUSTYNIAK INSURANCE :  
GROUP, INC., et al., :  
Plaintiffs, :  
v. : C.A. No. 11-464S  
ASTONISH RESULTS, L.P., :  
Defendant. :

GRONINGER INSURANCE :  
AGENCY, LLC, et al., :  
Plaintiffs, :  
v. : C.A. No. 11-564S  
ASTONISH RESULTS, L.P., :  
Defendant. :

A.J. AMER AGENCY, INC., :  
Plaintiff, :  
v. : C.A. No. 12-351S  
ASTONISH RESULTS, LLC, :  
Defendant. :

**MEMORANDUM AND ORDER**

Before the Court in these three cases<sup>1</sup> for determination pursuant to 28 U.S.C. § 636(b)(1)(A), DRI LR Cv 72(a), are Plaintiffs' Motions for Leave to Amend Complaints and

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<sup>1</sup> An identical motion was filed in a fourth related case, Jerry Fischer Insurance Agency, Inc. v. Astonish Results, LLC, CA No. 12-337S, but was withdrawn.

Defendant's Responses, which raise issues pertaining to both discovery in all three cases and the deadlines in the Standard Pretrial Orders in the Augustyniak and Groninger cases:

1. Augustyniak Insurance Group, Inc., et al. ("Augustyniak") v. Astonish Results, L.P. ("Astonish"), C.A. No. 11-464S: Plaintiffs' First Motion for Leave to Amend Complaint (ECF No. 43); Defendant's Response to Plaintiffs' First Motion for Leave to Amend Complaint (ECF No. 45);
2. Groninger Insurance Agency, LLC, et al. ("Groninger") v. Astonish, C.A. No. 11-564S: First Motion for Leave to Amend Complaint (ECF No. 42); Defendant's Response to Plaintiffs' First Motion for Leave to Amend Complaint (ECF No. 45);
3. A.J. Amer Agency, Inc. ("Amer") v. Astonish, C.A. 12-351S: Plaintiffs' [sic] First Motion for Leave to Amend Complaint (ECF No. 12); Defendant's Response to Plaintiff's First Motion for Leave to Amend Complaint (ECF No. 14).

A hearing on these Motions was held on December 11, 2012.

Plaintiffs Augustyniak, Groninger and Amer commenced litigation in the District of Rhode Island against Defendant Astonish beginning with the filing of the Augustyniak case on October 14, 2011, followed by the filing of Groninger on November 18, 2011, and the filing of Amer on May 9, 2012. All of the original Complaints accused Astonish of breach of contract, fraud in the inducement, breach of fiduciary duty and breach of its obligations of good faith and fair dealing, arising from a Marketing Agreement that each of them entered into with Astonish to obtain digital marketing, training and consulting.

Less than a week before Astonish conducted its Rule 30(b)(6) depositions of each Plaintiff, and only two months before the close of discovery in Augustyniak and Groninger, Augustyniak, Groninger and Amer moved to amend their Complaints, proposing Amended Complaints that add two new counts and are otherwise substantially different from the original Complaints. During the Rule 30(b)(6) depositions of the three Plaintiffs, which followed the

Motions to Amend by a matter of a few days, the proposed Amended Complaints were used as exhibits.

Plaintiffs now seek to have the Court's leave to proceed with their Amended Complaints pursuant to Fed. R. Civ. P. 15. Astonish does not object to the amendment but asks that the Standard Pretrial Orders in Augustyniak and Groninger be aligned with the Standard Pretrial Order in Amer so that it is afforded additional time to complete any discovery that may be necessary as a result of such a significant amendment. In addition, Astonish seeks the Court's leave to propound new Rule 30(b)(6) deposition notices to Plaintiffs based on the Amended Complaints. Finally, Astonish seeks leave to propound ten additional Interrogatories, also focused on the new issues raised by the Amended Complaints.

While Plaintiffs do not object to the amendment of the Standard Pretrial Orders in Augustyniak and Groninger, they argue vigorously that Astonish should be barred from either new Rule 30(b)(6) depositions or any new Interrogatories, despite the extensive nature of the amendment to the Complaints.

In support of their argument that Rule 30(b)(6) depositions should not be permitted, Plaintiffs rely upon the opportunity Astonish had to examine witnesses about the amendments in the days immediately following the filing of the Motions, as well as the cost of producing the same witnesses again in Rhode Island. The first argument is specious: the Rule 30(b)(6) topics for which the deponents had prepared and were obliged to testify did not cover any of the new material in the proposed Amended Complaints. Astonish has the right to seek such discovery. With respect to the cost issue, the Court observes that Astonish might well find acceptable an accommodation regarding the venue of the depositions or that the depositions might be taken

telephonically or by using some other methodology to reduce the expense to Plaintiffs.<sup>2</sup> With regard to Interrogatories, the Court notes the inappropriateness of the conduct of a party who renumbers a set of Interrogatories and refuses to answer those that exceed twenty-five by the jerry-rigged count.<sup>3</sup> Notwithstanding what may have been done in these cases in the past, there is no question that new Interrogatories are appropriate in light of the scope of the amendment to the Complaints.

Based on the foregoing, the Court orders as follows

1. The Standard Pretrial Orders in Augustyniak and Groninger are hereby amended to conform to the dates in the Standard Pretrial Order already entered in Amer.
2. Plaintiffs' Motions to Amend their Complaints are granted.
3. Defendant may proceed with Rule 30(b)(6) depositions of Plaintiffs focused on the new issues raised by the Amended Complaint.
4. Defendant may propound up to ten new Interrogatories in each case focused on the new issues raised by the Amended Complaints.

So ordered.

ENTER:

/s/ Patricia A. Sullivan  
PATRICIA A. SULLIVAN  
United States Magistrate Judge  
December 12, 2012

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<sup>2</sup> No order is made about the venue of the depositions.

<sup>3</sup> Counsel are cautioned that, if Interrogatories appear to exceed the limitation on the number provided in Fed. R. Civ. P. 33(a)(1), counsel should meet and confer instead of engaging in self-help in the form of a refusal to respond.